



STATE BOARD OF EQUALIZATION

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Executive Director

May 2, 2005

To Interested Parties:

Re: Customer Services and Administrative Efficiency Committee – May 24, 2005 Meeting

At the March 22, 2005 Board meeting, the Board considered a petition from Vice Chairman Claude Parrish to amend the Board's Rules of Practice (California Code of Regulations, title 18, section 5010 et seq.). The Members voted to have the issues that were raised at the Board meeting considered by the Customer Services and Administrative Efficiency Committee. Consideration of these issues is scheduled for the May 24, 2005 committee meeting.

Objectives

Based on the discussion that took place at the March 22, 2005 Board meeting, staff has identified the following objectives:

1. Allow taxpayers to request additional presentation time in advance of the oral hearing for complex cases.
2. Schedule matters so that taxpayers and staff are not required to spend the entire Board meeting waiting for their matters to be heard.
3. Encourage publication of more Board decisions and provide legal guidance as to whether a Board decision warrants publication.

Staff Recommendations

The above-referenced objectives may be implemented through policy direction provided by the Board. With regard to these objectives, staff has the following recommendations:

1. With the approval of the Chair, allow the Chief of Board Proceedings to grant requests for additional time, generally not more than an additional 10 minutes per party, for complex cases. Direct staff to include information in the materials provided to taxpayers that a written request for additional time to present a complex case may be made in advance of a hearing.

2. Consistent with past practice, schedule matters on the agenda for either a morning or an afternoon session. While considering the best utilization of Board Member time, generally schedule oral hearings during the morning session and public hearings and administrative matters during the afternoon session.
3. With the materials provided to Board Members for Business Taxes and Franchise Tax Board appeals, the Appeals Division will also provide a brief analysis and recommendation regarding whether the Board's decision should be published. Based on direction from the Board at the upcoming committee meeting, a brief analysis and recommendation can be provided for every case or only for those cases for which staff recommends publication.

Background Information

1. Additional Time for Complex Cases

Regulation 5077 provides as follows:

The Chief of Board Proceedings shall allocate hearing time for each party, including response time, and reserve time for questions by the Board. Before the hearing, the Chief of Board Proceedings shall inform the parties and the Board in writing of the allocations. At the hearing, the Chief of Board Proceedings shall announce the hearing time allocations and inform the Board Chair when each of the allocations has elapsed.

Based on previous Board direction, the Chief of Board Proceedings currently allocates 35 minutes for each hearing as follows: 10 minutes for the taxpayer, 10 minutes for the Department, 5 minutes for the taxpayer's rebuttal, and 10 minutes for the Board Members' questions. However, Regulation 5077 authorizes the Chief of Board Proceedings to allocate hearing time in a manner that differs from the current time allocations. The current practice with regard to the allocation of additional time is as follows:

1. The taxpayer provides the Chief of Board Proceedings with written justification for the request.
2. The Chief consults with the Appeals Division regarding the complexity of the case.
3. The Chief takes both the taxpayer's justification and the Appeal Division's position to the Chair with a recommendation for the Chair's approval or denial.

Absent a decision by the Chair to generally not allow for any additional presentation time, this approach meets the objective of providing sufficient time for taxpayers to present complex cases while avoiding unduly long presentations.

We note that the ability of parties to request additional time prior to the meeting will not preclude a Board Member from asking the Chair at the meeting to grant additional time for the presentation or for questions if needed.

2. Board Agenda

For meetings held during most of 2003 and 2004, the Board noticed all matters for a morning session only, which required all persons having a matter pending before the Board or wanting to participate in any matter to be at the meeting when the meeting started in the morning. Prior to 2003, the Board held separate morning and afternoon sessions. Matters scheduled for the afternoon session could not be heard prior to 1:30 p.m., which allowed those who were only interested in those matters to arrive at 1:30 p.m. In particular, public hearings on regulations were scheduled “at 1:30 p.m., or as soon thereafter as the matter may be heard,” which greatly reduced the wait time of those who were only in front of the Board on regulatory matters.

Staff recommends returning to the scheduling of morning and afternoon sessions and generally scheduling tax hearings during the morning session and public hearings for the afternoon session. Staff will otherwise continue to follow the current agenda format.

3. Publishing More Board Opinions

Under current practice, at the request of a Board Member, board staff, or a party, the Board votes whether to publish a Memorandum Opinion for a Business Taxes appeal or a formal opinion on an appeal from an action of the Franchise Tax Board. In the hearing materials prepared for Franchise and Income Tax appeals, the Appeals Division staff has included recommendations to publish certain Board decisions. Appeals Division staff has recently begun to do the same for Business Taxes cases.

In order to encourage the publication of more Board decisions, with the materials provided to Board Members for each Business Taxes and Franchise Tax Board appeal to be heard by the Board, the Appeals Division will provide a brief analysis and recommendation regarding whether the Board’s decision should be published. Based on direction from the Board at the upcoming committee meeting, staff can provide this analysis and recommendation for every case to be heard by the Board or only for those cases for which staff recommends publication.

Public Comment

We encourage you to provide your written comments by May 20, 2005. Please identify by number the specific objective(s) being addressed. We also encourage you to attend the committee meeting and to state your comments at that time.

Interested Parties

May 2, 2005

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Written comments should be directed to Ms. Joann Richmond, P.O. Box 942879, 450 N Street, MIC: 80, Sacramento, CA 94279-0080; Telephone (916) 322-1931; Fax (916) 324-3984; E-mail Joann.Richmond@boe.ca.gov.

Questions regarding this matter should be directed to Senior Tax Counsel Ani Kindall, Telephone (916) 324-2195, Fax (916) 323-3387, or E-mail Ani.Kindall@boe.ca.gov.

Sincerely,

Deborah Pellegrini, Chief
Board Proceedings Division